

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JULY 3, 2012**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present was Gina Klempel, Mark Hash and Gary Krueger. Scott Hollinger had an excused absence. Alex Hogle and Bailey Minnich represented the Flathead County Planning & Zoning Office.

There were 7 people in the audience.

**APPROVAL OF
MINUTES**

Klempel motioned and Hash seconded to approve the June 12, 2012 minutes. The motion passed unanimously.

**PUBLIC
COMMENT**
*(not related to
agenda items)*

None.

Krueger wanted to recognize Erik Mack who was a new member of the Planning Office and introduced the members of the board in attendance.

**FISH FOOL
PROPERTIES,
LLC**
(FCU 12-04)

A request by Fish Fool Properties, LLC, for a Conditional Use Permit to place a modular office building, for administrative paperwork purposes housing four employees, on property located at 103 Poplar Drive within the Evergreen, B-2 (General Business) Zoning District.

STAFF REPORT

Hogle reviewed Staff Report FCU 12-04 for the Board.

**BOARD
QUESTIONS**

Klempel and Hogle discussed how many employees the applicant currently employed.

**APPLICANT
PRESENTATION**

Jerome Krier Jr, applicant, briefly reviewed the application and the reason why he submitted the application which was to have a central location of the business close to town.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

None.

**BOARD
DISCUSSION**

Krueger and Hogle discussed why a conditional use permit was necessary in this case and why the permit was not for the

existing house.

**MAIN MOTION
TO ADOPT
F.O.F. AND
APPROVE
(FCU 12-04)**

Klempel made a motion seconded by Hash to adopt staff report FCU 12-04 as findings-of-fact and approve.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
AND APPROVE
(FCU 12-04)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Krueger told the applicant he would be receiving paperwork from the office concerning the permit and asked Donna Valade, board secretary how long that process usually took.

Valade said to expect the paperwork by the middle of the following week.

**DANIEL AND
CAROL RILEY
(FZV 12-02)**

A request by Daniel & Carol Riley for a Zoning Variance to property within the Little Bitterroot Lake Zoning District. The applicants are requesting a variance to Section 3.33.050 (6), Bulk and Dimensional Requirements, of the Flathead County Zoning Regulations. The property is located at 102 Locke Bay Drive E.

**BOARD
DISCUSSION?**

Minnich passed out handouts to the board which they reviewed.

The applicant requested a copy of the handout.

Valade made copies for the applicant.

Krueger clarified the board would hear an application for a variance with Minnich.

STAFF REPORT

Minnich reviewed staff report FZV 12-02 for the board.

**BOARD
QUESTIONS**

Krueger and Minnich briefly discussed the packet received from the neighbor which she passed out earlier and the timeline of the pictures in the packet. They also discussed if the pictures and timeline would have changed the staff report and

recommendation and what constituted a building footprint and building line.

**APPLICANT
PRESENTATION**

Pete Carroll, representing the applicant, handed out packets to the board.

The board read the packets.

Carroll started to give a history of the property and history between the current owners and neighbors who jointly own the land.

Krueger said the board was there to hear why the applicant should be granted a variance, not violation complaints.

Carroll continued on to discuss the regulations, when they went into effect, a comparison of photographs of the house at different years and how the face of the house was the same. He also spoke about improvements to the house and when the improvements were done. The applicants' position was that they did not change the footprint of the house, extend the foundation of the house, or add square footage to the house except for the 66 square foot mudroom which was in the same space of the original deck. He also stated the only change to the house was the mudroom which affected staff's report and threw the property out of the status of being grandfathered, non compliant. They did not encroach into the neighbors' property. The footprint was the same as before. He disagreed wholeheartedly with the Planning Office and their report. He discussed markers on the property and one marker in particular, which had been there since the Rileys had purchased the property, which no one knew where it came from. He explained where the marker was located. He said the Rileys did not do anything to the house except replace the deck, add the mud room, and make the ingress and egress easier for them. The major improvements in 2003 were to the north side of the house with the addition of an artist's garret.

Klempel and Carroll discussed if the replacement deck was the same size as the original deck.

Carroll went on to say the alteration of the Rileys' house did not materially alter or amend the structure of the house. He said since the Planning Office found a septic map, they assumed the Rileys added onto the house and changed the footprint. If the footprint was the foundation, he didn't know what was done with

the deck which encroached on the property line. If the footprint was the deck, nothing had been changed. He said the reasonable use of the property was limited if the variance was not granted. The Rileys would have to dramatically and drastically change their house if a variance was not granted. A hardship was created when the house was built, they didn't create the hardship and it would be a huge expense to remedy the situation. The granting of the variance would not adversely affect the neighboring property because their neighbors live 60 feet away. They share an adjoining driveway, they could not agree on what to do about the encroachment. It was a long term, non conforming use that a variance was reasonable to cure. He briefly summarized his presentation.

Carol Riley, applicant, went over the history of the property, where two markers were, what had been done with the property, the fact the house had a wet basement and needed to be waterproofed and the fact the replacement deck was found out later to be over the property line. That issue had been resolved. She said they build the mudrooms for the primary reason of energy conservation. She felt it was an admirable thing in this day and age to help conserve energy. If the variance was not granted, it would be a source of expense to them in heating and cooling. She went on to say she did not agree with the Lake Association's comment on the setback. She felt it was unreasonable and not meant to apply to old houses such as hers. She did not see how any fair minded and reasonable person could say this issue was adverse to the neighbor or any neighbor. She felt the neighbor may have a vendetta issue with them.

**STAFF
REBUTTAL**

Minnich read section 2.07.040 number 2 and 3 in the regulations regarding changes which are permitted to a non conforming structure.

Hash asked for further clarification on the section.

Hash and staff discussed at length what constituted a building line and how the section in the regulations related to the application. They also discussed how the eaves fit into the definition of building line.

Minnich said the findings which were in the staff report were the criteria by which the Planning Office had to review a variance request which was very specific. She said finding number seven

left out whether the issue impacted neighbors because the office had no evidence either way if the neighbor was or was not impacted by the encroachment.

**BOARD
QUESTIONS**

None.

**APPLICANT
REBUTTAL**

Riley said all buildings were made with eaves extending, the issue of three feet was difficult to apply to this situation.

**PUBLIC
COMMENT**

Ryan Sandvig, 110 Locke Bay Drive, was the property owner next to the applicant. He gave an in depth history of the property, what had been done as far as construction and resurveying of the property since the family had a lengthy history since the 1970's owning the property. He explained photos of the property. He was against the application.

The board and Sandvig discussed the relation of the property line to the fence he installed.

**STAFF
REBUTTAL**

Krueger said he would open up staff rebuttal again as well as applicant rebuttal.

Minnich said based on the emails received from Sandvig and his comments, it did appear three trees which were mentioned were a good marker of the change of the patio footprint, but the enclosed area of the deck did appear to coincide with the original footprint. The problems with the application would be the eaves and the walk way.

Hogle compared similarities in photographs from different times concerning the enclosed part of the deck.

**APPLICANT
REBUTTAL**

Riley said the issue of the overhang had nothing to do with the request for the variance. She said it was a property line issue. She believed Minnich said two feet were allowed on an overhang in a setback. They would be willing to shave off the portion of the structure which was in the neighbor's property. They had no problem narrowing the deck. They would not do any more until they found out the results of the application. She was sure they had not exceeded the existing footprint and they were more than willing to fix the walk way.

Carroll summarized the pictures concerning the deck, and three trees. He said the point was under the regulations, the footprint

did not extend past its original position. He felt the issue probably was a conflict of personalities and that was why they were here. They were asking for the variance because they believed it was appropriate for the situation. When the Little Bitterroot Lake Land Use Committee adopted their rules they said a reasonable variance should be granted. He thought the application was reasonable and felt it should be granted.

BOARD DISCUSSION

Krueger asked if the board was confident they had reviewed the information presented thoroughly.

Hash and Klempel agreed they had.

The board and staff discussed the building line, what defined the building line, the definition of non conforming structure and how it applied to this situation, the criteria for granting a variance, how to grant a variance and possibilities for conditions on the variance. They also discussed potential additions and amendments to the findings of fact.

Krueger said he was going to step outside of talking about the variance for a moment and summarized the board's authority concerning granting a variance.

Hash said they were a release valve for the Zoning Regulations and tried to do what was fair. They had to follow what the regulations said for variances.

Carroll asked if he could speak.

Krueger said if it was not pertaining to the application.

Carroll and the board briefly discussed findings of fact which suggested the Rileys changed the foundation of the building.

Krueger said they would discuss the findings of fact.

Minnich read findings staff had been asked to draft concerning previous board discussion.

The board and staff went through the findings of fact individually to obtain any suggestions from board members if they needed to be changed or discussed.

**MAIN MOTION
TO AMEND
F.O.F. #7, ADD
F.O.F. #10 AND
#11 AND ADOPT
F.O.F.
(FZV 12-02)**

Hash made a motion seconded by Klempel to adopt Findings of Fact #1-9 of Staff Report FZV-12-02, amend finding of fact #7 to read:

7. Granting of the variance request creates a significant impact on the neighboring properties because the adjacent property owner submitted comment at the public hearing and the Board of Adjustment took that into account.

And add findings of fact #10 and #11 to read:

10. Based on photographic evidence, portions of the deck constructed prior to adoption of the Little Bitterroot Lake zoning district are part of the non-conforming structure and constitute the building line because those portions of the deck equal or exceed 3 feet in height pursuant to Section 7.03.100 FCZR.

11. Based on photographic evidence the enclosed portion of the deck coincides with deck areas which are recognized as being legally non-conforming, and that alteration is compliant with the provision outlined in Section 2.07.040(3) FCZR with the exception of the eaves where they extend beyond the building line because the building line is non-conforming due to its position within the side setback area.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
AMEND F.O.F.
#7, ADD F.O.F.
#10 AND #11
AND ADOPT
F.O.F.
(FZV 12-02)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO DENY
(FZV 12-02)**

Hash made a motion seconded by Klempel to deny FZV 12-02.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
DENY
(FZV 12-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Krueger said the board denied the request but said they did clear up several issues concerning the application.

OLD BUSINESS

Klempel and Hash discussed if a plaque had been made for a previous board member who had passed away.

Hash explained the request for the plaque.

Donna Valade said she would bring the issue up to the Planning Director.

Krueger asked for an update on the process for replacing Terry Kramer who had resigned from the board.

Valade summarized where the office was in the process.

Hash asked for the website which was used for the pictures in the staff reports.

Staff gave the website to Hash and instructed how to get the appropriate pictures of property.

Krueger thanked the staff for thinking on the run with the new information presented at the meeting.

NEW BUSINESS

None.

ADJOURNMENT

The meeting was adjourned at approximately 7:52 pm. on a motion by Hash. The next meeting will be held at 6:00 p.m. on August 7, 2012.

Scott Hollinger, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 8 / 7 / 12*